

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.5514 of 2013

and

M.P.Nos.1 of 2013 and 1 of 2015

S.Shivaraj

.. Petitioner

vs.

The University of Madras,
rep. by its Registrar,
Chepauk, Chennai -600005.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the respondent herein in Off.Comm.No.F.1(C)/Estt/Tech/2013/642 dated 27.2.2013, quash the same, and consequently, direct the respondent herein to regularise the services of the petitioner in the sanctioned post of Technical Officer or its equivalent in any other nomenclature, in accordance with the Service Rules of the University of Madras.

For petitioner : Mr.G.Chamki Raj

For respondent : Mrs.G.Thilakavathi
Standing Counsel for the
University of Madras

ORDER

The petitioner has filed the present Writ Petition for the relief stated above.

2. The learned counsel for the petitioner submitted that, initially, the petitioner was appointed as a "Temporary Tablulator" for a period of 5 months on a consolidated pay of Rs.8000/- per month. Thereafter, he was appointed as "Temporary Technical Officer" on a consolidated pay of Rs.15,000/- per month for a period of 5 months from 18.1.2011 to 17.6.2011. By order dated 18.7.2011, he was appointed as "Temporary Technical Officer" for a period of 6 months from 4.7.2011 to 3.1.2012 on a consolidated pay of Rs.15,000/- per month. It is further submitted that even during the break in his services, i.e., from 18.6.2011 to 3.7.2011, he was discharging his duties and responsibilities under the

respondent. Thereafter, by order dated 28.2.2012, he was given appointment in the same post with the same salary for a period of 6 months from 30.1.2012 to 29.7.2012. Before orders of appointment were issued to him, he was made to sign a contract of service. By order dated 23.8.2012, the respondent appointed the petitioner in the same post with the same salary for a period of 3 months from 6.8.2012 to 5.11.2012. He continued to work even during the break in service, that is between the period from 30.7.2012 to 5.8.2012. I was made to sign a contract as was done earlier, before the order of fresh appointment was issued to the petitioner. Thereafter, he came to know through a communication dated 14.12.2012 from the respondent to the Dean of the College Development Council that his appointment would not be extended any further and that his services were dispensed with effect from 5.11.2012. Thereafter, the respondent issued a fresh order of appointment dated 23.1.2013 appointing the petitioner in the same post with the same salary for a period of 2 months from 8.1.2013 to 7.3.2013 wherein he had also stated that no further extension will be entertained for reasons whatsoever in this regard. He has been approaching the respondent and his Section Head to take necessary steps to appoint him against the sanctioned post of Technical Officer which is lying vacant. On 16.2.2013, he sent a representation to the respondent seeking regularisation of his services. By reply dated 27.2.2013, the respondent has rejected his request saying as per the terms of contract of service, he should not claim a permanent position or absorption by virtue of his temporary appointment. Hence, the petitioner has filed the present Writ Petition seeking for quashing the proceedings of the respondent dated 27.2.2013 by which the respondent has rejected the request of the petitioner to appoint him in the post of "Technical Officer" and to direct the respondent to appoint him in the sanctioned post of "Technical Officer" or its equivalent in any other nomenclature, in accordance with the Service Rules of the University of Madras.

3. Refuting the allegations of the petitioner, the respondent has filed a counter affidavit. Reiterating the averments made in the counter affidavit, the learned counsel for the respondent University submitted that the petitioner was appointed as "Temporary Technical Officer" on a temporary basis on a consolidated salary of Rs.15,000/- per month in A-2 Section, University of Madras only for assisting the screening committee in computerising its recommendations for approval of qualification of college teachers. He was initially appointed for a period of five months from 18.1.2011 to 17.6.2011, subject to the fulfilment of terms and conditions of agreement of service contract entered into by the petitioner with the respondent University. His temporary service has been extended for a further period of spells with usual break in service as detailed below in the University as per the orders of the then Vice-Chancellor:-

(a)	18.01.2011	to	17.06.2011	..	5 months
(b)	04.07.2011	to	03.01.2012	..	6 months
(c)	30.01.2012	to	29.07.2012	..	6 months
(d)	06.08.2012	to	05.11.2012	..	3 months

Thereafter, the services of the petitioner were dispensed with. The services of the petitioner was brought on a contract basis on a consolidated salary from 8.1.2013 to 7.3.2013 at Rs.15,000/- per month subject to the fulfilment of terms and conditions of agreement of service contract entered into by the petitioner with the University. Any appointments in the Technical Cadre has to be done as per the UGC norms and hence, the said appointment will be done only by direct recruitment calling for applications through open advertisement. Therefore, the request of the petitioner for appointing him as "Technical Officer" in the sanctioned post was rejected. It is always open to the petitioner to apply for the posts as and when they were called for. It is further submitted that Writ Petitions filed by the similarly placed persons seeking for appointment to the permanent post was dismissed by this Court with an observation that no claim for permanent posts could be claimed when they were appointed on temporary basis.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

5. It is admitted by the petitioner himself that he was temporarily appointed in the post of "Technical Officer". Further, he has also admitted that he has entered into service contract. Therefore, his appointment was on contract basis. Further, under the relevant University statutes, the recruitment has to be done only by following the procedure. The petitioner, only because of the contract, having been in the University, cannot seek for permanency of the job.

6. In S.Kaladaran vs. The University of Madras in Writ Petition Nos.26213 to 26216 of 2009, by order dated 22.7.2011, this Court has observed in Paragraph 5 which is as follows:

"5. Therefore, on the face of the said contract, the petitioner's claim cannot be countenanced by this Court. Further, under the relevant University statutes, the recruitment has to be done only by following the procedure. The petitioners, only because of the contact, having in the University, cannot seek challenging the regular selection made by the University."

7. In Secretary to Government, School Education Department, Chennai vs. R.Govindaswamy and others in Civil Appeal Nos.2726-2729 of 2014 dated 21.2.2014, the Hon'ble Apex Court has held in Paragraph 7, which is as follows:-

7. This Court in *State of Rajasthan & Ors. v. Daya Lal & Ors.*, AIR 2011 SC 1193, has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and laid down well-settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein. The same are as under:

"8(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or adhoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be "litigious employment". Even temporary, adhoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to

claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.

(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in government run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute." (Emphasis added)

8. In C.Lakshmi vs. the Government of Tamil Nadu, Chennai and two others in W.A.No.2911 of 2012 dated 10.7.2014 (batch cases), a Division Bench of this Court held as follows:-

"11. We do not propose to go into the applicability of the Government Order passed in G.O.Ms.No.74 Personnel and Administrative Department dated 27.6.2013 in the light of the observations made by the Supreme Court in Civil Appeal Nos.2726-29 of 2014 with Nos.2730-31 of 2014. Based upon the statement made by the learned Advocate General appearing for the State, it is well open to the parties concerned to make representations before the authorities concerned contending that the decision rendered in their favour by the learned single Judge has already been complied with and therefore, their services shall not be disturbed in the light of the Government Order passed in G.O.Ms.No.74 Personnel and Administrative Department, dated 27.7.2013 as well as order passed by the Supreme Court in Civil Appeal Nos.2726-29 of 2014 with Nos.2730-31 of 2014. As and when such representations are made before the appropriate authority, the authority concerned is directed to consider and pass orders within a period of eight weeks from the date of receipt of a copy of this order."

9. In the light of the facts of the case and in the light of the aforesaid decisions, the impugned communication in Off.Comm.No.F.1(C)/Estt/Tech/2013/642 dated 27.2.2013 is quashed. It is open to the petitioner to make a representation to the respondent within a period of two weeks from the date of receipt of a copy of this order. If any such representation is made by the petitioner, the respondent is directed to consider the application of the petitioner taking into consideration the service rendered by him and pass orders on merits and in accordance with law, without being influenced by any observations of this Court herein, as expeditiously as possible, preferably within a period of 12 weeks from the date of receipt of such representation.

10. With the above observation, the Writ Petition is allowed of. Connected Miscellaneous Petitions are closed. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

The Registrar,
The University of Madras,
Chepauk, Chennai - 600 005.

+1cc to Mrs. G. Thilakavathi, Advocate SR. 8769

+1cc to Mr.K. Elango, Advocate SR. 8757

सत्यमेव जयते

W.P.No.5514 of 2013
and

M.P.Nos.1 of 2013
and 1 of 2015

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KJI (CO)
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